



Appeal Decision

Site visit made on 2 November 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2022

Appeal Ref: APP/T5150/C/20/3251418

Flats 1-6, 24 Nutfield Road, London NW2 7EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Y Domb against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 16 March 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
 - The requirements of the notice are:
 1. Cease the use of the premises as a House in Multiple Occupation (HMO) and its occupation by more than ONE household.
 2. Cease the use of the premises as flats.
 3. Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.
 4. Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (b)

2. In an appeal on ground (b) it is necessary for the appellant to demonstrate that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters have not occurred.
3. The appellant's argument is that no mixed use has taken place, rather, at the date the notice was issued, the property was wholly in use as an HMO.
4. A self-contained flat normally comprises a dwellinghouse for the purposes of the Act. The Act does not define what constitutes a dwellinghouse. Nonetheless, it was accepted in *Gravesham*¹ that the distinctive characteristic

¹ *Gravesham BC v SSE & O'Brien* [1983]

- of a dwellinghouse was its ability to afford those who used it the facilities required for day-to-day private domestic existence.
5. In contrast, S254 of the Housing Act 2004 sets out that an HMO contains two or more households who occupy living accommodation and share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. Basic amenities are defined as a toilet, personal washing facilities or cooking facilities.
 6. Even if a unit of accommodation has those basic amenities and does not share one or more of those basic amenities with other households, it is not automatically a dwellinghouse for the purposes of the *Gravesham* test. One must still consider whether the amenities it provides afford the occupiers the facilities required for day-to-day private domestic existence. This is the approach endorsed in *Brent*².
 7. The appeal property comprises 6 units of accommodation with a kitchen on the first floor and a kitchen on a second floor. Planning permission was granted on 3 December 2020³ for the proposed change of use of the property to a 4 bed, 5 person HMO with communal kitchen and lounge area, retention of off road parking space and provision of cycle and waste storage within the front garden area.
 8. On 26 November 2019 the LPA inspected 2 of the units at the property. It is said that one unit had a microwave which was not plugged in. Both units are said to have had a fire blanket and extinguisher adjacent to the kitchen worktop. A sign was displayed prohibiting cooking in the units. The LPA thus say that it appeared at that time that the property was in use as 6 bedsits sharing 2 kitchens.
 9. The LPA issued a Planning Contravention Notice on 20 December 2019. A response was provided on 30 January 2020 in which the appellant described the use as 6 units. Thereafter the appellant applied for an HMO licence for 6 bedsits with a shared kitchen on 2 March 2020. The notice was thereafter issued on 16 March 2020.
 10. It is agreed that each unit was accessed by a single lockable door. Each unit contained bathroom and toilet facilities as well as a kitchen area which comprised a worktop, units, fridges and a sink. The LPA says that some of the units have contained all the facilities required for day to day existence and thus as self-contained flats, whilst others relied on the communal kitchen.
 11. However, beyond that there is no evidence from the LPA that any of the units contained conventional cooking facilities at the time the notice was issued. The two units the LPA visited prior to the notice being issued contained no working cooking facilities and were, as the LPA noted, reliant on the shared kitchen. Indeed, the LPA says that it appeared to it at the time of its visit in December 2019 that the property was in use as 6 bedsits sharing 2 kitchens.
 12. At the time of my site visit, I saw that none of the rooms contained cooking facilities. Whilst the units may have been capable of accommodating microwaves or plug-in ovens, which could easily be removed, it seems to me that such facilities would not offer occupants the required scope and flexibility

² *Brent LBC v Secretary of State and Reiner* [2020] EWHC 3620 (Admin)

³ LPA Ref: 20/3210

for cooking that is offered by the conventional oven and facilities provided for in the shared kitchen. The rooms on the ground floor were not of sufficient size and layout to accommodate conventional cooking facilities. Moreover, whilst the units on the upper floor were larger, I saw no clear evidence that conventional cooking facilities had been provided. In addition, even if microwaves or plug-in ovens were used, occupants have still had the option of using the shared kitchen to provide for the necessary facilities for cooking. The availability of this facility has been essential to meet the everyday needs of the occupants.

13. I note the appellant, as well as some occupiers, have described the units as flats. I also note the appellant registered the property as 6 flats with the Valuation Office on 19 June 2015 whilst Energy Performance Certificates were obtained for each of the units as flats on 24 August 2015. In addition, I understand that applications for housing benefit were received by the Council in respect of units 5 and 6 in August and September 2015.
14. However, how the units are described is not necessarily how they were actually used. Moreover, in some instances, references to the property being in use as 6 flats significantly pre-dates the issue of the enforcement notice such that they do not provide evidence that the property was in mixed-use as an HMO and flats at that time.
15. Consequently, given the lack of evidence of conventional cooking facilities being present in the property at the time the notice was issued, I consider the rooms were not capable of providing the facilities required for day-to-day private domestic existence at that date. Thus, when the notice was issued, there was no use of the property as self-contained flats.
16. I am therefore led to conclude that the alleged breach of planning control comprising the material change of use of the premises to a House in Multiple Occupation (HMO) and flats had not occurred.
17. The appeal on ground (b) succeeds.

Conclusion

18. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (c), (d), (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

J Whitfield

INSPECTOR